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SUPREME COURT OF THE UNITED STATES.

No. 59.

JAMES BOYCE'S EXECUTORS APPELLANTS,

VERSUS

FELIX GRUNDY.

APPEAL FROM CIRCUIT COURT UNITED STATES FOR DISTRICT OF WEST TENNESSEE.

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Pleas at Nashville, in the District of West Tennessee, before the Honorable John McLean, Associate Justice of the Supreme Court of the United States, and the Honorable John McNairy, Judge of the District Courts of the United States for the Districts of East and West Tennessee, on the first Monday, being the sixth day of September, in the year 1830, *and of the Independence of the United States the fifty-fifth.*

FELIX GRUNDY, complainant,
vs.
ROBERT BOYCE AND RICHARD BOYCE, Executors of JAMES BOYCE, deceased, defendants. } *Chancery.*

This day came the complainant, by his counsel, and produced to the court here a mandate from the Supreme Court of the United States, which is in the words following, to wit:

No. 15.] UNITED STATES OF AMERICA, *ss.*

[L. S.] *The President of the United States of America, to the honorable the Judges of the Circuit Court of the United States for the District of West Tennessee, greeting:*

Whereas, lately, in the circuit court of the United States for the district of West Tennessee, before you or some of you, in cause wherein Felix Grundy was complainant, and Robert Boyce and Richard Boyce, executors of James Boyce, deceased, were defendants, in chancery, the decree of the said circuit court was in the following words, viz: "His honor does order, adjudge, and decree, that said contract or agreement between James Boyce, now deceased, and complainant, be in all things rescinded and annulled, and because it appears from the evidence that complainant has never received any part of the rents for the plantation, but that an arrangement between him and Robert Boyce, authorized him (R. Boyce) to sue Reed, the complainant's tenant, in complainant's name, for Boyce's benefit, for the rents of 1819, 1820, 1821, 1822, and 1823, that he did so and recovered therefor, and got the same, and that complainant did, by his agent, Harry L. Douglass, esq., notify defendants to take possession of said land and plantation, as he would not retain the same on account of the fraud aforesaid. It also appearing, from the records of this court, that this bill was filed on the day of 1823; that at the June term of this court, 1824, complainant was ready and pressed for a trial, and that defendants were not ready for trial, at that or any subsequent term, but continued the same on their affidavit; and it appearing to the court that complainant did pay said James Boyce the sum of twelve hundred and fifty dollars, on the 5th day of July, 1818, and on that day executed to him his note for seven hundred and fifty dollars, in part payment for said land, and that James Boyce had a counterpart of the agreement. Exhibit A.

"It is further ordered, adjudged, and decreed, that defendant Robert, administrator of the goods, &c., of James Boyce, deceased, do pay to complainant said sum of twelve hundred and fifty dollars, with legal interest thereon, at the rate of eight per centum, per annum, which appears to be the legal rate of interest in said Mississippi State, from the said fifth day of July, 1818, until this day, making the sum of twenty hundred and sixty-five dollars and twenty-eight cents, to be levied of the goods, &c. of said James, in his hands to be administered, and execution issue therefor as at law; and that defendants do surrender to the clerk and master of this court, said note for seven hundred and fifty dollars, and said counterpart, within three calendar months after final decree in this cause, which, together with the agreement exhibited in the bill, shall be by him cancelled, and that defendant be perpetually enjoined from executing said judgment on the law side of this court. It is further decreed that defendants pay the costs of this suit, and the costs of said suit at law, and that execution issue therefor as at law;" as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel. On consideration whereof, it is ordered and decreed by the

court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs. Feb. 2, 1830.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable John Marshall, Chief Justice of the said Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty.

WM. THOS. CARROLL,
Clerk of Supreme Court of the United States.

Costs of defendant in error: Clerk,		$20 59
Attorney,		20 00
		$40 59
Costs of plaintiff in error: Clerk,		$24 38½

Taxed by WM. THOS. CARROLL, *C. S. C. U. S.*

And now, to wit, September 13, 1830, "this cause came on this day, and on a former day of this term, to be heard before the Honorable John McLean and John McNairy, judges, in presence of counsel on both sides, upon the mandamus from the Supreme Court, affirming the decree formerly rendered in this court, and in obedience to said mandate, it is ordered, adjudged, and decreed, that the defendants pay the costs of the Supreme Court of the United States, and the costs of appeal to be taxed by the clerk and master, and upon motion and petition of complainant, the cause is set down for further directions; and it is ordered that the clerk and master take an account of the assets of James Boyce, deceased, in the hands of the defendant, Robert Boyce, to be administered, and make report, during this term, until the coming of which report, other matters are reserved."

And at the same term, to wit, September 28th, 1830. "This cause came on for further directions, this 28th September, 1830, and upon the exceptions filed by the counsel for defendants, to the report of the clerk and master, which report was made in pursuance of a decree rendered at a former day of this term, and is in the words and figures following, to wit:

"In obedience to the interlocutory order made in this cause at the present term, the clerk and master reports, that it does not appear that any personal assets of James Boyce, deceased, came to the hands of said defendants as his executors; but it does appear, from the agreement between complainant and Robert Boyce, admitted to have been dated the 23d May, 1823, and from the depositions of Thomas B. Reed, Isaac Caldwell, and James E. Gillespie, that Robert Boyce has received for rents, previous to the first day of January, 1824, the sum of - - - - - $2,100 00

That interest on this sum, from the first day of January 1824, till the 1st September, 1830, (at the rate of eight per centum, per annum, the transaction having taken place in the State of Mississippi, where, by the pleadings in this cause, that is admitted to be the legal rate of interest), will amount to - - - 1,120 00

Amounting in all to - - - - - $3,220 00

The above depositions of Reed, Gillespie, and Caldwell, and said agreement are herewith produced as a part of this report. It appears from the answer of defendants that the land in controversy was devised, by James Boyce, deceased to one Richard Boyce, one of the defendants in this cause. All of which is respectfully submitted.

N. A. McNAIRY, *Clerk.*
By JOHN CARSON, *Deputy Clerk.*"

September 16, 1830.

And exceptions to said report being argued by counsel, and fully understood by the court here, it is ordered, adjudged, and decreed, that the exceptions to said report be overruled, and that the report be confirmed, except so far as relates to the interest on the sum of twenty one hundred dollars. It is further ordered, adjudged, and decreed, that the complainant recover of Robert Boyce the said sum of twenty one hundred dollars, with interest from this day, to be levied of his own proper goods and chattels, lands and tenements, and that, for the balance due the complainant, amounting to four hundred and ninety-six dollars and forty-six cents, with interest from this time, and also the aforementioned sum of two thousand one hundred dollars, in case the same is not paid by the said Robert Boyce, on or before the first Monday in March next, and the costs of this suit; that the complainant has a lien on the tract of land in the State of Mississippi, in the pleadings mentioned, and is entitled to have the same sold to satisfy the above mentioned sums of money. It is further ordered, adjudged, and decreed, that, in case the said sums of money and costs of suit, or any part thereof, be unpaid on the first day of March next, that, in that case, the said tract of land and appurtenances, be exposed for sale at Natchez, in the State of Mississippi, by commissioners to be appointed by the clerk and master of this court, on such credit as he may direct, forty days notice of the time and place of sale being given in some public newspaper printed in Natchez. And it is further ordered, adjudged, and decreed, that, in case of said sale, that the defendants, Robert Boyce, as executor and administrator with the will annexed, and Richard Boyce, join in a deed or deeds to the purchaser or purchasers, under the direction of the clerk and master of this court; and it is further ordered that the clerk and master of this court make report of his proceedings to the next term of this court."

The exceptions filed to the report of the clerk and master, is in the words following, to wit:

"Defendants, by their counsel, except in manner following to the report of the clerk and master of this court in this cause:

1st. It is not the fact, as stated by the said clerk and master, that the agreement between R. Boyce and F. Grundy, of date 23d May, 1823, admits, either on its face or by implication, that the said Robert Boyce had then or has now assets in his hands as executor of the last will and testament of James Boyce, deceased.

2d. Defendants except to said report, if by it it is intended to render Robert Boyce liable, as executor of James, on the ground that he had assets in May, 1823, because the same may have been long since paid away in discharge of debts due by the testator in his lifetime.

3d. Defendant excepts to said report, because it should have been stated that the agreement between R. Boyce and F. Grundy, of May 23d, 1823, was an agreement with said Boyce, not as executor, but in his own indi-

vidual capacity, and that said Boyce was acting merely as attorney in fact for said Grundy, and is responsible, if at all, in his individual capacity, "the collections to be made by said Boyce, if the contract between James Boyce and said Grundy was rescinded to be, stand, and remain subject to future arrangement between said parties."

For these and many other reasons to be assigned on argument, defendant's counsel pray that said report be recommitted to said clerk and master.

BALCH, *for Defendants.*"

And at the same time, on the 29th day of September, 1830: "From the decree rendered in this cause at the present term, the defendants pray an appeal to the Supreme Court of the United States, which is granted on the said defendants giving bond and security according to law.

Appeal Bond.

"Know all men by these presents, that we, Robert Boyce and James Harlan, of the county of Mercer, in the State of Kentucky, and Robert J. Moore, of the town of Nashville, in the State of Tennessee, are held and firmly bound unto Felix Grundy in the sum of two hundred and fifty dollars, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 6th day of November, A. D. 1833.

The condition of the above obligation is such, that whereas, in a certain suit in equity, prosecuted in the circuit court of the United States for the district of West Tennessee, by Felix Grundy, complainant, against Richard Boyce and Robert Boyce, executors of the last will and testament of James Boyce, deceased, defendants, it was ordered, adjudged, and decreed by said court, (at the September term thereof, 1830,) that the complainant should recover of Robert Boyce the sum of twenty-one hundred dollars, with interest from the day of the rendition of said decree, to be levied of his own proper goods and chattels, lands and tenements, &c. From which decree (at a subsequent day of the same term) the said defendants prayed and obtained an appeal to the Supreme Court of the United States.

Now, if the said appellants shall prosecute their said appeal with effect, or in case they fail therein, pay all such costs as may be awarded against them for such failure, then this obligation to be void; else, to be and remain in full force and virtue.

[Signed.] ROBERT BOYCE, [SEAL.]
By William Thompson, his Attorney in fact.
Witness, JAMES HARLAN. [SEAL.]
J. G. HAY, ROBERT J. MOORE. [SEAL]
N. A. MCNAIRY.

The following is a power of attorney from Robert Boyce to William Thompson:

"Whereas, at the September term, in the year 1830, of the circuit court of the United States, for the district of West Tennessee, held at Nashville, in the suit in chancery therein depending, from the mandate of the Supreme Court of the United States, wherein Felix Grundy was complainant, and Robert Boyce and Richard Boyce, executors of the last will and testament of James Boyce, deceased, were defendants, a decree was pronounced that the complainant, Felix Grundy, recover of the said Robert Boyce the sum of

twenty-one hundred dollars, with interest from the day of the rendition of said decree, to be levied of his own proper goods and chattels, lands and tenements. And whereas, at another day of said term, the said defendants prayed an appeal to the Supreme Court of the United States, which was granted, on said defendants giving bond and security according to law.

Now, know all men by these presents, that I, Robert Boyce, executor and defendant aforesaid, of the county of Mercer, and State of Kentucky, have constituted and appointed, and by these presents hereby constitute and appoint, George W. Campbell, William Thompson, and Robert J. Moore, and each of them my attorneys in fact, to execute for me, and in my name, any bond or bonds which may be proper or necessary to be executed, to prosecute an appeal or writ of error to the Supreme Court of the United States, from the decree aforesaid, of said circuit court of the United States. And I hereby invest my said attornies, or either of them, with full power and authority to execute and sign, in my name, any bond for the purpose of accomplishing the object desired by me, that is to say, the prosecution of a writ of error or appeal aforesaid, for the reversal of said decree. Hereby ratifying and confirming whatever my said attorneys, or either of them may do for me in the premises.

In witness whereof I have hereunto set my hand and affixed my seal, this 24th day of October, A. D. 1833.

[Signed.] ROBERT BOYCE. [SEAL.]

Executed in our presence,
JAMES HARLAN,
A. F. SMITH,
T. P. MOORE.

STATE OF TENNESSEE, } ss.
Davidson County, }

Court of Pleas and Quarter Sessions, October term, 1833.

Personally appeared before me Henry Ewing, clerk of the county court of said county, James Harlan, one of the subscribing witnesses to the within power of attorney, who, being duly sworn, deposes and says, that he is personally acquainted with Robert Boyce, the grantor of said power, and that he acknowledged the same to be his act and deed in presence of said deponent, on the day of the date thereof; and that A. F. Smith and T. P. Moore became subscribing witnesses to said power in his presence.

Witness my hand at office in Nashville, on this 6th day of November, A. D. 1833. HENRY EWING.

DISTRICT OF WEST TENNESSEE, ss.

I, Nathaniel A. McNairy, clerk of the circuit court of the United States for the district of West Tennessee, do hereby certify that the foregoing is a true and perfect transcript of the mandate and proceedings had thereon, at September term, 1830, of said court, in the case of Felix Grundy, complainant, against Robert Boyce and Richard Boyce, executors of the last will and testament of James Boyce, deceased, defendants, as also of the appeal bond and the power of attorney executed by Robert Boyce to William Thompson and others.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Nashville, this 6th day of November, in the year 1831, and of the Independence of the United States the 58th. [SEAL.] N. A. McNAIRY, *Clerk.*